

REMARKS

In response to the Office Action mailed on June 18, 2004, Applicant respectfully requests reconsideration. Claims 1, 3-18 and 20-22 are pending in this Application. Claims 1, 3, 8, 10, 18, 20 and 22 are herein amended. Claims 1, 10, 18 and 22 are independent claims and the remaining claims are dependent claims. Applicants believe that the claims as presented are in condition for allowance. A notice to this affect is respectfully requested.

Claims 1, 3-18 and 20-22 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,974,572 to Weinberg et al. (hereinafter Weinberg) in view of U.S. Patent No. 6,574,578 to Logan (hereinafter Logan).

Weinberg discloses testing of an application over a network by using network log files as test scripts. Weinberg discloses at column 6, lines 11-13, that "content objects include HTML documents, GIF files, sound files, video files, JAVA applets and aglets, and downloadable applications". Weinberg does not disclose the testing of technology based object oriented software components (e.g. enterprise java beans), nor does Weinberg disclose load testing of technology based object oriented software components.

Further, on page 20 of the Office Action, the Examiner quoted a passage from Weinberg, stating that Weinberg discloses at column 6, lines 11-13 "content objects include HTML documents, GIF files, sound files, video files, JAVA applets and aglets and downloadable applications ... (technology based software components)." Applicant points out that the quoted reference does not include the words in parenthesis, and further that Weinberg does not disclose or suggest the use of technology based (object oriented) software components, which is the reason for which the Examiner attempted to combine Weinberg with Logan.

Logan discloses generating test cases for testing an enterprise java bean, but only does so locally. As the Examiner stated on page 4 of the Office Action Logan recites at column 6, lines 22-23 "... [T]he test suites are run *locally* ... and the outcome of the test cases are stored." (emphasis added). Logan does not disclose or suggest testing a technology based object oriented software component over a network. Further, Logan does not disclose load testing, wherein a plurality of instances of the test code are run simultaneously.

In contrast to Weinberg and Logan, independent claim 1 has been amended to recite that the software component comprises an object oriented component, and that the plurality of instances of the test code are run **simultaneously**. Support for this can be found in the specification as filed at page 12, lines 17-36. It is the simultaneous execution of multiple instances of the test code that produces the load testing, Claim 1 further states "...said test code accesses said technology based object oriented software component of the application under test **over said computer network** ...". (emphasis added). Thus, independent claim 1 load tests technology based object oriented software components of an application (but not the actual application) by having the test code access the technology based object oriented software component over a network, the technology based object oriented software component resident on a different system than the generated test code. Weinberg fails to disclose testing of technology based object oriented software component, while Logan fails to disclose testing of a technology based object oriented software component over a network, and neither Logan nor Weinberg disclose or suggest load testing a technology based object oriented software component by running multiple instances of the test code simultaneously.

The Examiner attempted to combine the teachings of Weinberg and Logan, however Logan states, at column 1, lines 26-30 that "Software developers are turning to creating components, rather than monolithic applications, to free

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themselves from slow, expensive application development and to build up a portable reusable code base". Logan is thus teaching away from testing applications, and teaching away is the antithesis of combining this with another piece of prior art. Stated differently, the references are not properly combinable if one of them teaches away from what is taught by the other. In this instance Logan is teaching away from testing applications while Weinberg discloses testing applications. Accordingly, Applicants submit that the references are not properly combinable.

Accordingly, since Weinberg is not properly combinable with Logan, claim 1 is believed allowable over Weinberg in view of Logan. Further, even if a hypothetical combination of Logan and Weinberg were considered, the combination still fails to disclose or suggest the load testing of a technology based object oriented software component over a network wherein multiple instances of test code are run simultaneously. Claims 10, 18 and 22 recite similar language and are believed allowable over Weinberg in view of Logan for the same reasons. Claims 3-9, 11-17 and 20-21 depend from independent claims 1, 10 or 18 and are believed allowable as they depend from a base claim which is believed allowable.

In view of the above, the Examiner's rejections are believed to have been overcome, placing claims 1, 3-18, and 20-22 in condition of allowance and reconsideration and allowance hereof is respectfully requested.

If the U.S. Patent and Trademark Office deems a fee necessary, this fee may be charged to the account of the undersigned, Deposit Account No. 50-0901.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,

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Attorney Docket No.: EMP04-28

Dated: September 16, 2004